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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO, TXNM ENERGY, INC.AND TROY PARENTCO LLC FOR APPROVAL OF AN ACQUISITION AND MERGER OF TROY MERGER SUB INC. WITH TXNM ENERGY, INC.; APPROVAL OF A GENERAL DIVERSIFICATION PLAN; AND ALL OTHER AUTHORIZATIONS AND APPROVALS REQUIRED TO CONSUMMATE AND IMPLEMENT THIS TRANSACTION ("JOINT APPLICATION")	)	**Docket No. 25-00060-UT**

ORDER DENYING JOINT MOVANTS' MOTION REQUESTING AN INVESTIGATION REGARDING ZIMMER PURCHASERS' ACQUISITION OF $200MM OF TXNM ENERGY, INC.'S STOCK

THIS MATTER comes before Patrick Schaefer and Jocelyn Barrett, hearing examiners for the New Mexico Public Regulation Commission ("Commission"), upon New Energy Economy's ("NEE") and NM Consumer Protection Alliance's ("NMCPA") (collectively "Joint Movants") Motion and Brief Requesting an Investigation Regarding Zimmer Purchasers' Acquisition of $200 MM of TXNM Energy, Inc.'s Stock without Prior Commission Approval in Violation of NMSA 1978 § 62-6-12 ("Motion"), filed on August 7, 2026. The Hearing Examiners have reviewed the Motion, Public Service Company of New Mexico ("PNM") and TXNM Energy, Inc.'s ("TXNM") Response ("Joint Applicants' Response"), the Utility Division Staff's ("Staff") Response, Joint Movants' Reply, the Commission's July 2, 2026, Final Order on Show Cause Proceeding ("Final Order"), the evidentiary record identified by the parties, and the additional sworn evidence submitted with the Joint Applicants' Response. Being fully advised, the Hearing Examiners **FIND AND CONCLUDE** as follows:

I. PROCEDURAL BACKGROUND AND PARTY POSITIONS

1. In the Motion filed August 7, 2026, Joint Movants allege that TXNM Energy, Inc.'s Private Investment in Public Equity ("PIPE") stock purchase agreement with Zimmer Partners, LP

("Zimmer"), under which TXNM sold 3,615,003 shares of common stock to Zimmer for $200 million ("Zimmer stock transaction"), was in violation of Section 62-6-12(A)(3)(c), and as such, is void and of no effect under Section 62-6-12(B).[1]

2. As a basis for their allegation, Joint Movants assert that the Zimmer stock transaction was "entangled with the Blackstone/Troy TopCo merger agreement" and was not merely an independent capital raise.[2] In support of that position, they rely first on TXNM's June 24, 2025 Form 8-K and the Zimmer Stock Purchase Agreement, which required the Zimmer Purchasers, for so long as they held the purchased shares, to vote those shares in favor of the previously announced May 18, 2025 Merger Agreement and the transactions contemplated thereby, including the merger, and to vote on other matters in accordance with recommendations of the TXNM Board where such recommendations had been made.[3] Joint Movants contend that these voting provisions demonstrate that the Zimmer shares were contractually aligned with the proposed acquisition and therefore support their allegation that the stock acquisition was undertaken "for the purposes of" the merger within the meaning of NMSA 1978, Section 62-6-12(A)(3)(c).[4]

3. Joint Movants next contend that the Zimmer transaction and the earlier $400 million Troy TopCo PIPE should be considered collectively rather than as isolated stock

[1] Joint Movants' Motion and Brief Requesting an Investigation Regarding Zimmer Purchasers' Acquisition of $200MM of TXNM Energy, Inc.'s Stock Without Prior Commission Approval in Violation of NMSA 1978 § 62-6-12 (August 7, 2026) ("Zimmer Investigation Motion") at 1-3.

[2] *Id.* at 5-6.

[3] *Id.* at 6-7 and Ex. A, TXNM Energy, Inc., Form 8-K (June 24, 2025); *see also* Show Cause Proceeding, Joint Applicants' Ex. 1, Direct Testimony in Response to Show Cause Order of Joseph D. Tarry, and Ex. JDT-2, Stock Purchase Agreement between TXNM Energy, Inc. and Zimmer Partners, LP, *et al*., § 5.3 (June 24, 2025).

[4] Zimmer Investigation Motion at 6-7.

purchases.[5] They point to the fact that the Troy TopCo transaction represented approximately 7.55% of TXNM common stock and the Zimmer transaction approximately 3.4%, resulting in approximately 11% of TXNM common stock subject to voting restrictions that, according to Joint Movants, gave the TXNM Board authority to direct how those shares would be voted.[6] Joint Movants characterize the two transactions as components of an "integrated financing structure" and argue that the combined voting arrangements created or consolidated a controlling interest within the meaning of New Mexico law.[7] They further contend that the timing and common voting mechanisms associated with the transactions support treating them as coordinated components of the same merger-related financing structure rather than unrelated investments.[8]

4. Joint Movants also rely on evidence from the prior Show Cause Proceeding concerning communications among TXNM and Blackstone/Troy during negotiation of the Zimmer transaction.[9] They cite evidence that TXNM initially proposed a term sheet to Zimmer for common equity; received input from Blackstone concerning the term sheet; vetted draft materials with Blackstone; revised certain covenants after discussions with Blackstone; and circulated versions of the Zimmer Stock Purchase Agreement to Blackstone.[10] Joint Movants also rely on testimony from TXNM Chief Executive Officer Joseph Don Tarry explaining that TXNM consulted with Blackstone concerning the Zimmer transaction because provisions of the Merger

[5] *Id.* at 7-9.

[6] *Id.* at 8-9 (*citing* Testimony of Joseph Don Tarry, Show Cause Proceeding Tr. at 28 (Apr. 30, 2026)).

[7] *Id.* at 8-9.

[8] *Id.*

[9] *Id.* at 9-12.

[10] *Id.* at 10-11 (*citing* Show Cause Proceeding Tr. at 54, 59, 60–65; NEE-CBD Ex. 3, including NEE JA Ex. NEE 7-5).

Agreement governed TXNM's conduct while the merger was pending.[11] From these communications, Joint Movants infer that TXNM did not act independently in structuring the Zimmer transaction, but instead coordinated with Blackstone/Troy to ensure that the transaction was aligned with and would not compromise the proposed merger.[12]

5. Finally, Joint Movants rely on the relationship between the Zimmer issuance and TXNM's broader equity-raising plans.[13] They cite Mr. Tarry's testimony that the Zimmer equity issuance was part of the same overall $800 million capital raise that included the earlier Troy TopCo PIPE.[14] Joint Movants contend that, when this financing relationship is considered together with the voting restrictions, TXNM's consultation with Blackstone, and the timing of the transaction, the evidence supports their allegation that the Zimmer transaction was undertaken as part of a coordinated merger-related financing structure and therefore warrants investigation under Section 62-6-12.[15]

6. On August 20, 2026, the Joint Applicants filed their Response to the Joint Movants' Motion. There, the Joint Applicants assert that "Zimmer did not act in concert with TXNM or Troy to advance the Acquisition, is not a public utility or a registered public utility holding company, and is unaffiliated with the parties involved in the Acquisition Proceeding."[16] They further

[11] *Id.* at 11 (*citing* Testimony of Joseph Don Tarry, Show Cause Proceeding Tr. at 86-87 (Apr. 30, 2026)).

[12] Zimmer Investigation Motion at 11-12.

[13] *Id.* at 9-10.

[14] *Id.* at 9-10 (*citing* Testimony of Joseph Don Tarry, Show Cause Proceeding Tr. at 49-50 (Apr. 30, 2026)).

[15] Zimmer Investigation Motion at 9-12.

[16] Response to Joint Movants' Motion and Brief Requesting an Investigation Regarding Zimmer Purchasers' Acquisition of $200 Million of TXNM Energy Inc.'s Stock Without Prior Commission Approval in Violation of NMSA 1978, § 62-6-12 (Aug. 20, 2026) ("Joint Applicants' Response") at 5.

emphasize that the Zimmer stock transaction "was not for the purposes of the Acquisition," and that "the transaction was not negotiated in connection with the merger nor part and parcel to TXNM's merger agreement with Troy."[17]

7. Joint Applicants point out that Zimmer approached TXNM independently and more than a month after the merger agreement with Troy was entered into, and after TXNM publicly announced that it expected to issue an additional $400 million of equity prior to closing of the proposed Acquisition.[18] To support this characterization of Zimmer's independent action, Joint Applicants attach the Affirmation of Sabrina Greinel, Vice President, Treasurer and Strategy for TXNM ("Greinel Affirmation"). In her Affirmation Ms. Greinel states under penalty of perjury that Zimmer approached TXNM expressing interest in making an investment after TXNM publicly announced its intent to issue additional equity; that Zimmer approached TXNM independently of Troy and Blackstone Infrastructure; and that she managed all communications with Zimmer while the stock transaction was being negotiated.[19] Ms. Greinel further states that TXNM notified Troy of the proposed stock transaction and Troy reviewed the terms of the stock purchase agreement, but that, to the best of her knowledge and understanding, Zimmer had no direct communication with Troy or Blackstone Infrastructure regarding the stock transaction.[20]

8. Joint Applicants additionally point to the sworn testimony of Sebastian Sherman, Senior Managing Director of Blackstone Inc., in the Show Cause Proceeding, which they contend

[17] *Id.*

[18] *Id.* at 5, 11-12.

[19] *Id.* at 7 and Ex. A, Affirmation of Sabrina G. Greinel ("Greinel Affirmation") ¶¶ 7, 10.

[20] Greinel Affirmation ¶¶ 11-12.

confirms that Blackstone Infrastructure did not initiate the transaction or introduce TXNM to Zimmer, and that Zimmer never communicated directly with Troy or a Troy affiliate or Blackstone Infrastructure or a Blackstone Infrastructure affiliate.[21]

9. Joint Applicants also assert that Joint Movants' allegation that the voting restrictions on the shares sold to Zimmer establish that the Zimmer stock transaction was executed to effectuate the merger is conclusory. They state that such a restriction is "not unusual for private placement investments during the pendency of a shareholder vote on a major transaction," and explain that TXNM sought to avoid having a third-party investor purchase a block of shares for disruptive purposes after the merger transaction was announced.[22] Joint Applicants further note that Zimmer's shares represented approximately a 3.4% ownership interest in TXNM and could not have altered the overwhelmingly favorable shareholder vote approving the merger.[23] In their view, the contractual voting condition, standing alone, does not establish that the third-party investment by Zimmer was a concerted transaction among Troy TopCo, TXNM, and Zimmer for the purpose of effectuating the Acquisition.[24]

10. Joint Applicants also raise jurisdictional and prudential concerns. They argue that the Commission may lack jurisdiction or authority to compel Zimmer to participate in any investigation because Zimmer is a registered investment adviser domiciled in New York, is not a public utility or registered public utility holding company in New Mexico, and is not affiliated

[21] Joint Applicants' Response at 7-8 and n.6 (*citing* Direct Testimony of Sebastien Sherman at 12:10-19 (Apr. 6, 2026)); Greinel Affirmation ¶ 12.

[22] Joint Applicants' Response at 13-14.

[23] *Id.* at 14.

[24] *Id.*

with one.[25] Joint Applicants further argue that because Zimmer has already sold the shares, there would be a "daisy-chain effect" requiring identification of subsequent market purchasers that could complicate any effort to void the transaction.[26] In this regard, they contend that a determination concerning whether the Zimmer stock transaction is void and of no effect under Section 62-6-12(B) may be "moot as a matter of practicality."[27]

11. Joint Applicants further contend that opening the requested investigation could signal to other existing and potential purchasers of TXNM stock that they may become subject to Commission jurisdiction and investigation merely by acquiring stock in a public utility holding company.[28] They argue that such a result could run counter to the public-interest policies reflected in the Public Utility Act, which recognize both the protection of consumers and the importance of attracting capital and investment.[29]

12. Finally, Joint Applicants request that, if the Commission determines that an investigation of the Zimmer stock transaction is warranted, the matter be addressed in a separate docket rather than through the pending Acquisition Proceeding.[30] They argue that Zimmer is not a party to the Acquisition Proceeding, has not sought intervention, no longer holds TXNM stock,

[25] *Id.* at 5, 15-18.

[26] *Id.* at 6, 18.

[27] *Id.* at 18.

[28] *Id.* at 18-19.

[29] *Id.* at 19.

[30] *Id.* at 8-10.

and does not have the type of direct and substantial interest in the Acquisition that would warrant bringing it into the existing docket.[31]

13. On August 20, 2026, Commission Utility Division Staff ("Staff") filed its Response to Joint Movants' Motion. Staff first asserts that the Commission's Final Order on Show Cause Proceeding requires transaction-specific findings under Section 62-6-12(A)(3)(c). Staff therefore concludes that the fact that the Blackstone and Zimmer transactions together represented approximately eleven percent of TXNM common stock does not itself establish that the Zimmer transaction was undertaken for the purposes of the merger.[32]

14. Staff also concludes that the circumstances surrounding the Zimmer transaction are "materially different" from those surrounding the Blackstone/Troy TopCo stock transaction that was the subject of the original Show Cause Proceeding.[33] Staff identifies, among other distinctions, that the Zimmer transaction was executed after the May 18, 2025 merger agreement rather than contemporaneously with it; the $200 million Zimmer transaction was not included in the bidder package or made a condition of the merger agreement; Zimmer was not affiliated with Blackstone, the acquirer; and testimony in the Show Cause Proceeding characterized the Zimmer issuance as part of TXNM's broader capital campaign to raise $800 million.[34]

15. Regarding the requirement that Zimmer vote its shares in favor of the merger, Staff concludes that the covenant, standing alone, does not establish that Zimmer was "associated,

[31] *Id.* at 9-10.

[32] Staff's Response to Joint Movants' Motion and Brief Requesting an Investigation Regarding Zimmer Purchasers' Acquisition of $200MM of TXNM Energy, Inc.'s Stock Without Prior Commission Approval in Violation of NMSA 1978 § 62-6-12 (Aug. 20, 2026) ("Staff Response") at 3-4.

[33] *Id.* at 4.

[34] *Id.*

affiliated, or acting in concert with a qualifying entity for statutory purposes, or whether the purchase itself was undertaken for purposes of the acquisition within the meaning of Section 62-6-12(A)(3)(c)."[35] Staff also recognizes that TXNM consulted Blackstone concerning the Zimmer term sheet and draft agreement, but notes the prior testimony that the consultation occurred because the merger agreement governed TXNM's conduct pending closing and TXNM sought to avoid acting in breach of that agreement.[36] Staff ultimately concludes that the current record does not establish the same nexus between the stock issuance and the proposed acquisition that existed in the original Show Cause Proceeding and therefore does not warrant issuance of a show cause order absent additional facts.[37]

16. On August 26, 2026, Joint Movants filed their Reply to the Joint Applicants' Response. Joint Movants argue that the Zimmer investigation should proceed in Case No. 25-00060-UT; that the contractual requirement that Zimmer vote the newly issued shares in favor of the Acquisition is sufficient evidence to initiate an investigation; that Zimmer's subsequent disposition of the shares does not relieve the Commission of its obligation to determine whether TXNM and Blackstone acted in concert in connection with the original $200 million transaction; and that Zimmer's potential unwillingness to participate in an investigation does not justify declining to investigate.[38]

[35] *Id.*

[36] *Id.* at 4-5 (*citing* Show Cause Tr. 86-87).

[37] *Id.* at 5.

[38] Joint Movants' Reply to TXNM/PNM's Response to Motion Requesting Investigation of Zimmer Purchasers' $200 Million Acquisition of TXNM Stock (Aug. 26, 2026) ("Joint Movants' Reply").

17. Joint Movants further argue that TXNM has not fully answered questions concerning Zimmer's subsequent sale of the shares; that the passage of time does not preclude investigation; that the alleged violation of Section 62-6-12(A)(3)(c) remains relevant to the underlying Acquisition application; and that accepting Joint Applicants' position that the matter is effectively too late to investigate would improperly constrain the Commission's jurisdiction.[39] Joint Movants also dispute the weight that should be given to the factual assertions and sworn evidence submitted with Joint Applicants' Response and maintain that those factual assertions demonstrate the need for, rather than provide a basis to deny, an investigation.[40]

II. GOVERNING STANDARD UNDER THE COMMISSION'S FINAL ORDER

18. The Commission's July 2, 2026, Final Order establishes the substantive framework for determining whether a stock acquisition falls within NMSA 1978, Section 62-6-12(A)(3)(c). The Commission expressly rejected the contention that Section 62-6-12(A)(3)(c) applies only when the challenged stock acquisition independently results in control of a public utility or public utility holding company. At the same time, the Commission made clear that Section 62-6-12(A)(3)(c) "does not apply to every acquisition of utility stock." Rather, the statutory phrase "for the purposes of" supplies an important limiting principle by restricting the provision to stock acquisitions undertaken "for the purposes of" an acquisition, merger, or consolidation subject to Section 62-6-12.[41]

[39] *Id.*

[40] *Id.*

[41] Final Order on Show Cause Proceeding (July 2, 2026) ("Final Order") ¶¶ 27-29.

19. The Commission further determined that the Legislature's use of the phrase "for the purposes of" requires a "broad, functional inquiry rather than a narrow formalistic inquiry."[42] Under that approach, the relevant inquiry is not limited to whether the challenged stock transaction, viewed in isolation, independently transfers operational control. Instead, the Commission must examine the role the stock acquisition played within the broader acquisition structure and determine whether, as a matter of purpose and function, the stock acquisition was undertaken for the larger regulated acquisition, merger, or consolidation.[43]

20. Applying that construction, the Commission identified three statutory elements necessary for application of Section 62-6-12(A)(3)(c): (1) stock of a public utility or public utility holding company must be acquired; (2) the acquiring person must be associated, affiliated, or acting in concert with a person subject to regulation or classified as a public utility or public utility holding company in any jurisdiction; and (3) the acquisition must be undertaken "for the purposes of" an acquisition, merger, or consolidation subject to Section 62-6-12.[44] The Commission expressly held that the statute imposes no additional requirement that the stock acquisition involve a controlling interest, majority ownership, or change in control.[45]

21. The Commission grounded this interpretation in the purposes of the Public Utility Act ("PUA") and the Commission's responsibility to exercise oversight over transactions affecting regulated public utilities in New Mexico.[46] In doing so, the Commission cited the Legislature's

[42] *Id.* ¶ 30.
[43] *Id.*
[44] *Id.* ¶ 32.
[45] *Id.*
[46] *Id.* ¶ 31.

declaration that "the public interest, the interest of consumers and the interest of investors require the regulation and supervision of public utilities," as well as the Commission's statutory authority to regulate and supervise public utilities with respect to their securities and to do all things necessary and convenient in the exercise of that authority.[47]

22. The public interest therefore informs the Commission's responsibility to give meaningful effect to Section 62-6-12 and to examine potentially acquisition-related stock transactions functionally rather than formalistically. It does not, however, eliminate the limiting language of Section 62-6-12(A)(3)(c) or convert every acquisition of utility stock into a transaction requiring Commission review.[48]

23. The Final Order also distinguishes the Section 62-6-12 inquiry from the Commission's ultimate public-interest review of the proposed acquisition under Section 62-6-13. The Commission explained that whether the acquisition itself is lawful and consistent with the public interest is governed by a separate statutory framework and the Commission's established six-factor acquisition analysis.[49] Thus, generalized public-interest considerations do not substitute for the transaction-specific nexus required under Section 62-6-12(A)(3)(c). The threshold inquiry remains whether the challenged stock transaction bears the relationships and acquisition-related purpose specified by that statute.[50]

[47] *Id.* ¶ 31 n.28 (*quoting* NMSA 1978, § 62-3-1(B), *and citing* NMSA 1978, § 62-6-4(A)).

[48] ¶¶ 28-31.

[49] *Id.* ¶¶ 58-60; *see also* NMSA 1978, § 62-6-13.

[50] Final Order ¶¶ 28-33, 58-60.

24. The Final Order's analysis supports a transaction-specific inquiry into whether the information presented raises a material question concerning the presence of the statutory nexus identified in Section 62-6-12(A)(3)(c).[51] Accordingly, in determining whether the circumstances presented here warrant further investigation, the Hearing Examiners consider whether the information before them, viewed collectively and in its full factual and transactional context, raises a material question whether the Zimmer stock acquisition was made by a person associated, affiliated, or acting in concert with a qualifying person and was undertaken "for the purposes of" the proposed acquisition within the meaning adopted by the Commission.[52]

25. This inquiry does not require Joint Movants to establish a violation of Section 62-6-12(A)(3)(c) before an investigation may occur. Conversely, the existence of some relationship between a stock transaction and a pending acquisition does not necessarily require formal investigation. *The question is whether the facts identified and taken as true for the purposes of this analysis, evaluated under the Commission's broad and functional approach, raise a material, transaction-specific question that the statutory relationship and acquisition-purpose requirements may be present.*[53]

III. DISCUSSION

A. The Zimmer transaction is materially different from the original Troy Topco financing transaction

26. Joint Movants rely heavily upon alleged similarities between the Zimmer Transaction and the $400 million Troy TopCo financing transaction considered in the prior Show

[51] *Id.* ¶¶ 28-33.

[52] *Id.* ¶¶ 30-33; *see also* 1.2.2.22 NMAC.

[53] *See* Final Order ¶¶ 28-33.

Cause Proceeding. The Commission's Final Order, however, did not find the Troy TopCo transaction unlawful because of any single fact taken in isolation. Instead, the Commission examined the transaction as a whole and determined that multiple, mutually reinforcing facts established that the stock purchase arose directly from, and was structured as part of, the acquisition process.[54] Applying that same functional inquiry to Zimmer demonstrates material differences between the two transactions.

i. Origin of the Transactions

27. In the Troy TopCo transaction, the Commission found that TXNM affirmatively incorporated the $400 million PIPE into the acquisition process itself. TXNM made the PIPE part of the prospective bidder package and informed potential acquirers that the merger and PIPE were to be consummated by the same potential acquirer.[55]

28. Here, the record presented with the current Motion shows no comparable bidder-package requirement. Instead, Ms. Greinel states that, after TXNM publicly announced its intention to issue additional equity, Zimmer independently approached TXNM concerning an investment. She further states that Zimmer approached TXNM independently of Troy and Blackstone Infrastructure.[56]

29. This distinction is substantial. In the original PIPE, the acquiring entity's purchase of TXNM stock was built into the competitive acquisition process before selection of the acquirer.

[54] Final Order ¶¶ 40-48.

[55] *Id.* ¶ 41.

[56] Greinel Affirmation ¶ 7.

In the Zimmer Transaction, the sworn evidence describes an outside investor responding to a publicly announced capital raise after the acquisition agreement had already been executed.

ii. Identity and Relationship of the Purchaser to the Acquirer

30. In the Troy TopCo transaction, Troy TopCo was part of the Blackstone/Troy acquisition structure. The Commission found that TopCo acquired the shares as part of a coordinated acquisition effort involving TXNM, Troy ParentCo, and affiliated Blackstone Infrastructure entities.[57]

31. Here, Zimmer is not alleged to be an affiliate of Troy or Blackstone. Staff specifically identifies Zimmer's lack of affiliation with the acquirer as a material difference from the original transaction.[58] The Greinel Affirmation and Sherman testimony further state that Blackstone did not introduce TXNM to Zimmer or initiate the transaction and that Zimmer had no direct communications with Troy or Blackstone Infrastructure concerning the stock purchase.[59]

32. The absence of the affiliation present in the original PIPE does not, standing alone, foreclose application of Section 62-6-12 because the statute also encompasses persons "acting in concert."[60] It does, however, materially affect the factual inquiry. The record that supported the original Show Cause Proceeding showed coordinated activity among entities participating in the acquisition itself. The present record contains no comparable evidence that Zimmer and Blackstone/Troy shared or implemented a common acquisition objective.

[57] Final Order ¶¶ 36-38.

[58] Staff Response at 4.

[59] Greinel Affirmation ¶¶ 7, 10-12.

[60] NMSA 1978, § 62-6-12(A).

iii. Timing and Transaction Formation

33. In the Troy TopCo transaction, the Commission found that the Merger Agreement and the Troy TopCo Stock Purchase Agreement were intended to be signed and announced simultaneously. The PIPE and merger were therefore formed contemporaneously and as coordinated components of the same acquisition process.[61]

34. Here, the Zimmer stock purchase agreement was executed on June 24, 2025, more than one month after the May 18, 2025, execution of the Merger Agreement and original Stock Purchase Agreement.[62]

35. The separation in time, standing alone, would not be dispositive. But timing is relevant when considered together with the origin, participants, contractual arrangements, and purpose of the transactions. Here, the timing reinforces rather than undermines the other evidence indicating that Zimmer responded to a previously announced equity raise rather than participating in the formation of the acquisition structure.

iv. Role in the Bidder Package and Merger Agreement

36. In the Troy TopCo transaction, the Commission expressly relied upon the fact that the $400 million financing was included in the bidder package. Potential acquirers were advised that the same acquirer would consummate both the merger and the PIPE. The Commission

[61] Final Order ¶¶ 40-41, 48.

[62] Joint Applicants' Response at 6-7; Staff Response at 4.

therefore found the financing to have arisen from "the structure and architecture of the proposed acquisition."[63]

37. Here, the record does not establish that the Zimmer Transaction was included in the bidder package, required by the Merger Agreement, or imposed as a condition upon the selected acquirer. Staff identifies the absence of those features as a principal distinction between Zimmer and the original PIPE.[64]

38. Joint Movants emphasize that TXNM notified Troy about the Zimmer Transaction and that Troy reviewed the proposed stock purchase agreement. That fact is relevant, but it is not equivalent to making the stock acquisition part of the bidding structure. The sworn evidence before the Hearing Examiners explains that Troy was consulted after the merger agreement was already in place and during the negotiation of a later capital transaction.[65] Mr. Tarry likewise previously testified that consultation occurred because the Merger Agreement regulated TXNM's conduct pending closing and TXNM sought to avoid acting inconsistently with its contractual obligations.[66] Consultation required or occasioned by an existing merger agreement is not functionally equivalent to a financing transaction that was affirmatively designed into the acquisition bidding process itself.

v. Purpose of Financing

[63] Final Order ¶¶ 40-41.

[64] Staff Response at 4.

[65] Greinel Affirmation ¶ 11.

[66] Staff Response at 4-5 (*citing* Show Cause Tr. 86-87).

39. In the Troy TopCo transaction, the Commission found that the original PIPE was designed to address financial risks created or intensified by the acquisition process and to support TXNM's business plan during the interim period preceding consummation of the acquisition. The Commission relied upon those facts in concluding that the financing enabled the acquisition to proceed according to its intended timetable and terms.[67]

40. Here, Staff notes that testimony in the Show Cause Proceeding characterized the Zimmer issuance as part of TXNM's overall campaign to raise an additional $800 million in equity.[68] The Greinel Affirmation also states that Zimmer approached TXNM after TXNM announced publicly that it expected to issue an additional $400 million in equity.[69]

41. The fact that TXNM announced its broader capital raise concurrently with the acquisition does not render every transaction used to accomplish that raise a transaction "for the purposes of" the acquisition. The Commission expressly held that Section 62-6-12(A)(3)(c) does not apply to every utility-stock acquisition: the question is whether the particular transaction functionally served the larger acquisition.[70] The evidence concerning the independent initiation of the Zimmer investment and its relationship to TXNM's broader capital program fails to establish the same merger-specific purpose found with respect to the original PIPE.

vi. Contractual Integration Between Stock Purchase and Merger

[67] Final Order ¶¶ 41-42, 47-48.

[68] Staff Response at 4 (*citing* Zimmer Investigation Motion at 10; Show Cause Tr. 50-51).

[69] Greinel Affirmation ¶ 7.

[70] Final Order ¶¶ 28-30.

42. In examining the Troy TopCo transaction, the Final Order relied upon multiple contractual connections between the stock purchase and merger, including the bidding process, interim-financing purpose, share-transfer restrictions, voting obligations, required contribution of shares to ParentCo, and merger-agreement termination rights. Taken together, the Commission found those provisions established that the stock transaction and merger were "inextricably linked."[71]

43. Here, Joint Movants identify a contractual voting covenant requiring Zimmer to vote the purchased shares in favor of the acquisition and certain Board-recommended matters.[72] But the Motion does not identify comparable evidence that Zimmer was required to contribute its shares into the acquisition structure, that the Zimmer agreement was subject to merger-related termination provisions comparable to those considered in the Final Order, or that the Zimmer transaction otherwise formed a contractual component of the merger architecture.

44. Joint Applicants additionally offer evidence that the voting provision would have been included in any private-placement investment occurring while the announced acquisition remained subject to shareholder vote.[73] The Hearing Examiners can reasonably conclude that, in this record and for the purposes of this specific analysis, the voting covenant is not accompanied by the broader set of acquisition-specific contractual features upon which the Commission relied in finding the original PIPE "inextricably linked" to the merger.

[71] *Id.* ¶¶ 47-48.

[72] Zimmer Investigation Motion at 8; Joint Movants' Reply at 2-4.

[73] Joint Applicants' Response at 7, 13-14.

vii. Coordination Among the Relevant Participants

45. In the Troy TopCo transaction, the Final Order found that the relevant entities engaged in lengthy, detailed, and resource-intensive negotiations to bring about the original PIPE and that those negotiations were part of a coordinated acquisition effort involving TXNM and entities affiliated with the acquirer.[74]

46. Here, the Greinel Affirmation states that Ms. Greinel managed all communications with Zimmer during negotiation of the transaction and that, to her knowledge, Zimmer did not communicate directly with Troy or Blackstone Infrastructure regarding the stock transaction.[75] Mr. Sherman's sworn testimony similarly states that Blackstone Infrastructure neither initiated the transaction nor introduced Zimmer to TXNM and that no direct communication occurred between Zimmer and Troy/Blackstone concerning the transaction.[76]

47. Joint Movants correctly observe that TXNM nevertheless communicated with Troy and permitted Troy to review terms of the Zimmer agreement. The Hearing Examiners have considered that evidence. But communication between TXNM and its pending acquirer concerning TXNM's conduct during the pre-closing period does not, without more evidence, establish the coordinated common objective present in the original PIPE. The evidence presently offered does not show that Troy or Blackstone selected Zimmer, directed Zimmer to acquire the shares, negotiated directly with Zimmer, financed Zimmer's investment, entered into a side agreement

[74] Final Order ¶¶ 36-38.

[75] Greinel Affirmation ¶¶ 10-12.

[76] Joint Applicants' Response at 8 and n.6.

with Zimmer, or otherwise participated with Zimmer in a common plan to use the stock purchase to accomplish the acquisition.

48. Considered in their totality, the distinctions are material. The presence of some common features, most notably the fact that both transactions occurred while the acquisition was pending and both contained voting-related provisions, does not erase the substantial, material differences between the two. The Final Order requires a functional examination of the *entire* transaction, not a determination based upon isolated similarities. Applying that standard, the facts supporting the Zimmer Motion do not present the same degree or character of nexus to the acquisition that caused the Commission to find the original Troy TopCo PIPE "inextricably linked" to the merger.

B. Combined ownership does not provide an independent basis for investigation

49. Joint Movants additionally argue that the original eight-million-share Troy TopCo transaction and the Zimmer Transaction should be considered together because they allegedly resulted in Board-approved merger investors controlling approximately eleven percent of TXNM common stock.[77] However, the Commission expressly rejected control, majority ownership, and any minimum ownership percentage as independent requirements under Section 62-6-12(A)(3)(c).[78] Conversely, the absence or presence of a particular aggregate percentage does not substitute for the statute's actual requirements.

50. As Staff correctly explains, the dispositive questions are Zimmer's relationship to the relevant regulated or acquisition entities and the purpose for which Zimmer's particular

[77] Zimmer Investigation Motion at 2-3.

[78] Final Order ¶¶ 28-32.

acquisition was undertaken, not whether the sum of separately acquired shares reaches approximately eleven percent.[79] If Zimmer was not associated, affiliated, or acting in concert with a qualifying person for purposes of the acquisition, adding Zimmer's holdings mathematically to shares acquired through a different transaction does not create that relationship. Nor does aggregate ownership establish that Zimmer's purchase was undertaken "for the purposes of" the acquisition.

51. This conclusion *shall not* be read as reinstating a control requirement that was explicitly rejected by the Commission in its Final Order. It simply applies the Commission's holding that percentage ownership is not dispositive in either direction. The relevant inquiry remains the purpose and context of the particular stock acquisition and the relationship among the participants.

C. The sworn evidence submitted with the response further supports denial

52. Joint Movants argue in their Reply that factual assertions supplied by Joint Applicants should not themselves be used to foreclose an investigation intended to resolve factual disputes.[80] The Hearing Examiners agree that a respondent obviously cannot defeat inquiry merely by denying the allegations giving rise to it. But, here, the Joint Applicants did more than offer attorney argument. They submitted the sworn Greinel Affirmation based upon the knowledge of a TXNM officer who states that she managed the communications with Zimmer during negotiation of the transaction.[81] Her Affirmation supplies transaction-specific facts concerning how the

[79] Staff Response at 3-4.

[80] Joint Movants' Reply at 15.

[81] Greinel Affirmation ¶¶ 1-3, 10.

transaction originated, who communicated with Zimmer, the nature of Troy's involvement, and the absence, to her knowledge, of direct Zimmer communications with Troy or Blackstone.[82]

53. The facts established in Ms. Greinel's Affirmation are consistent with Mr. Sherman's previously filed sworn testimony concerning Blackstone's lack of involvement in initiating or introducing the Zimmer investment and the absence of direct communications between Zimmer and the Blackstone/Troy entities.[83] They are also consistent with Staff's independent assessment that the present record does not establish the same merger nexus that existed in the original Show Cause Proceeding.[84]

54. Joint Movants contend that additional investigation could reveal further evidence. But Rule 1.2.2.22 does not require formal investigation because a party has identified a theoretical possibility that additional evidence may exist to support their allegations. The Hearing Examiners have considered the principal facts upon which Joint Movants rely in their Motion as part of the Commission's required functional inquiry. Even with those facts carefully considered and taken as true for the purposes of this analysis, they do not establish a transactional nexus comparable to the set of facts that prompted and ultimately supported the original Show Cause Proceeding.

55. On this record, opening another formal investigation would inappropriately extend the Commission's investigatory process to a materially different transaction for which the present evidentiary showing does not demonstrate the acquisition-specific nexus required by the Commission's own interpretation of Section 62-6-12(A)(3)(c).

[82] *Id.* ¶¶ 7, 10-12.

[83] Joint Applicants' Response at 7-8 and n.6.

[84] Staff Response at 1, 4-5.

D. Conclusion

56. The Hearing Examiners have considered the evidence identified by Joint Movants, the responsive sworn evidence submitted by Joint Applicants, Staff's analysis, Joint Movants' Reply, and the Commission's Final Order as a whole.

57. The Commission's earlier observation that evidence concerning Zimmer "may warrant further regulatory attention" preserved the Commission's ability to consider a properly presented request; it did not predetermine the disposition of such a request. The current Motion has now received adequate notice, opportunity for briefing, Staff review, submission of sworn evidence, and a Reply by Joint Movants.

58. Applying the Commission's transaction-specific and functional standard, the Hearing Examiners conclude that the Zimmer Transaction is fundamentally different from the original Troy TopCo financing transaction in the characteristics most relevant under Section 62-6-12(A)(3)(c). The present record does not demonstrate comparable evidence that Zimmer participated in the acquisition process, acted together with the acquirer to structure or effectuate the acquisition, or acquired its shares pursuant to a transaction functionally integrated into the merger architecture.

59. Likewise, Joint Movants' aggregation of the Troy TopCo and Zimmer shareholdings does not establish an independent basis for investigation because the Final Order states that percentage ownership and control are not substitutes for the statutory inquiry into association, concerted action, and transaction purpose.

60. The Hearing Examiners have considered all other arguments, allegations, evidence, and requests for relief presented by the parties in connection with the Motion. To the extent any

argument, allegation, or request is not expressly addressed in this Order, it has nevertheless been considered and is resolved consistently with the findings, conclusions, and disposition set forth herein.

61. For these reasons, the Hearing Examiners conclude that the present record does not warrant initiation of a separate investigation pursuant to 1.2.2.22 NMAC concerning the Zimmer Transaction.

IT IS THEREFORE ORDERED:

A. Joint Movants' Motion and Brief Requesting an Investigation Regarding Zimmer Purchasers' Acquisition of $200 Million of TXNM Energy, Inc.'s Stock Without Prior Commission Approval in Violation of NMSA 1978 § 62-6-12 is **DENIED without prejudice.**

B. Any other argument, allegation, objection, or request for relief raised by any party in connection with the Motion that is not expressly addressed in this Order is **DENIED or otherwise DISPOSED OF consistent with this Order**.

C. This Order determines only that the present Motion and supporting record do not warrant initiation of a separate investigation into the Zimmer Transaction. Nothing herein modifies the Commission's interpretation of NMSA 1978, Section 62-6-12 set forth in the July 2, 2026, Final Order or limits the Commission's otherwise lawful authority should materially different evidence subsequently come before it.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, on October 16, 2026.

NEW MEXICO PUBLIC REGULATION COMMISSION



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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF THE JOINT APPLICATION OF PUBLIC SERVICE COMPANY OF NEW MEXICO, TXNM ENERGY, INC.AND TROY PARENTCO LLC FOR APPROVAL OF AN ACQUISITION AND MERGER OF TROY MERGER SUB INC. WITH TXNM ENERGY, INC.; APPROVAL OF A GENERAL DIVERSIFICATION PLAN; AND ALL OTHER AUTHORIZATIONS AND APPROVALS REQUIRED TO CONSUMMATE AND IMPLEMENT THIS TRANSACTION ("JOINT APPLICATION")	)	**Case No. 25-00060-UT**

CERTIFICATE OF SERVICE

This Certifies that on this date I sent a courtesy copy of the Order Order Denying Joint Movants' Motion Requesting Investigation, filed on PRCe360 on the same date, to the parties listed here.

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